FCC 00-117

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of	)			
Assessment and Collection of Regulatory Fees for Fiscal Year 2000	) MD Docket No. 00-58 )	Ð	1pr	FOO
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Adopted: March 29, 2000	; Released: April 3, 2000		2 52 PH	SEGILOR
Comment Date: April 24, 2000			Ē	,

By the Commission:

Reply Comment Date: May 5, 2000

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#### I. Introduction

- 1. By this Notice of Proposed Rulemaking, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 2000. <sup>1</sup>
- 2. Congress has required that we collect \$185,754,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 2000.<sup>2</sup> This amount is \$13,231,000 or approximately 7.67% more than the amount that Congress designated for recovery through regulatory fees for FY 1999.<sup>3</sup> Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has specified. Additionally, we propose to amend the Schedule in order to simplify and streamline it.<sup>4</sup>
- 3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. <sup>5</sup>

## II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. See Attachment G for a description of these activities. In our <u>FY 1994 Fee Order</u>, we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress. Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our experience administering the program in

<sup>&</sup>lt;sup>1</sup> 47 U.S.C. 159 (a).

<sup>&</sup>lt;sup>2</sup> Public Law 105-277 and 47 U.S.C. 159(a)(2).

<sup>&</sup>lt;sup>3</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 1999, FCC 98-200, released June 18, 1999, 64 FR 35831 (Jul. 1, 1999).

<sup>&</sup>lt;sup>4</sup> 47 U.S.C. 159(b)(3).

<sup>&</sup>lt;sup>5</sup> 47 CFR 1.1152 through 1.1156.

<sup>6 47</sup> U.S.C. 159(a).

<sup>&</sup>lt;sup>7</sup> 59 FR 30984 (Jun. 16, 1994).

<sup>&</sup>lt;sup>8</sup> 47 U.S.C. 159(b), (f)(1).

prior years.9

- 5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. <sup>10</sup> Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees. <sup>11</sup>
- 6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." <sup>12</sup>
- 7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.<sup>13</sup> For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology, which we continued to use for FY 1998, enabled us to develop regulatory fees which we believed would be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, while still consistent with the public interest, on the actual costs of regulating those services that are subject to a fee. However, we found that developing a regulatory fee structure based on cost information did not produce the desired results. We were anticipating that our regulatory costs would level off or, perhaps, decline causing these adjustments to decrease from the 25 percent towards zero. Since our regulatory costs have continued to rise, this methodology was discontinued. Therefore, we chose to base the FY 1999 fees only on the basis of "Mandatory Adjustments". Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.<sup>14</sup>

<sup>° 47</sup> CFR 1.1151 et seq.

<sup>10 47</sup> U.S.C. 159(b)(2), (b)(3).

<sup>11 47</sup> U.S.C. 159(b)(2).

<sup>12 47</sup> U.S.C. 159(b)(3).

<sup>13 47</sup> U.S.C. 159(i).

<sup>14 47</sup> U.S.C. 159(b)(4)(B).

#### III. Discussion

#### A. Summary of FY 2000 Fee Methodology

- 8. As noted above, Congress has required that the Commission recover \$185,754,000 for FY 2000 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.<sup>15</sup>
- 9. In developing our proposed FY 2000 fee schedule, we determined that we should continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule that we used in developing the FY 1999 fee schedule because our regulatory costs continue to rise, and using cost information to determine a regulatory fee schedule does not produce the desired result of collecting the amount required by Congress. Therefore, we estimated the number of payment units<sup>16</sup> for FY 2000 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1999 fees. Then we compared this revenue amount to the \$185,754,000 that Congress has required us to collect in FY 2000 and pro-rated the difference among all the existing fee categories.
- 10. Once we established our tentative FY 2000 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. These proposals are discussed in paragraphs 15-19 and are factored into our proposed FY 2000 Schedule of Regulatory Fees, set forth in Attachment D.
- 11. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2000.<sup>17</sup> In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 2000 regulatory fees.

#### B. Development of FY 2000 Fees

#### i. Adjustment of Payment Units

12. In calculating FY 2000 regulatory fees for each service, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1999 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each

<sup>15 47</sup> U.S.C. 159(a).

<sup>&</sup>lt;sup>16</sup> Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

<sup>&</sup>lt;sup>17</sup> We also will incorporate a similar Attachment in the <u>Report and Order</u> concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the <u>Report and</u> Order.

#### ii. Calculation of Revenue Requirements

13. We next multiplied the revised payment units for each service by the FY 1999 fees for each category to determine how much revenue we would collect without any change to the FY 1999 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately \$191.6 million. This amount is approximately \$5.9 million more than the amount the Commission is required to collect in FY 2000. We then adjusted the revenue requirements for each category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect \$185,754,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

# iii. Recalculation of Fees

14. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. See Attachment C.

#### iv. Proposed Changes to Fee Schedule

15. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). <sup>19</sup> As a result of this review, we are proposing the following "Permitted Amendments" to our Fee Schedule:

#### a. INTELSAT Satellites

16. The Commission, relying on portions of the legislative history of section 9, previously concluded that Comsat was exempt from section 9 fees for its INTELSAT space stations. Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 13 FCC Rcd 19820 (1998); Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 12 FCC Rcd 17161 (1997). In PanAmSat Corp. v. FCC, 198 F.3d 890 (D.C.Cir.1999), the court found that neither the statute itself nor the legislative history relied upon by the Commission was conclusive on the question of Comsat's liability for section 9 fees in these circumstances. It remanded the issue to the Commission for reconsideration of Comsat's exemption.<sup>20</sup>

<sup>&</sup>lt;sup>18</sup> It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately 7.67 percent in FY 2000 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

<sup>&</sup>lt;sup>19</sup> In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999 and FY 2000, none of the proposed fee increases exceed 25%.

<sup>&</sup>lt;sup>20</sup> As directed by the court, the Commission will consider the section 9 satellite fees for FY 1998; however, that consideration will be separate from this proceeding.

17. On March 17, 2000 Congress enacted the Open Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act). Section 641[c] of the ORBIT Act provides:

"[c] PARITY of TREATMENT – Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services."<sup>22</sup>

In light of this statutory language, it is clear that, for FY 2000, Comsat as the United States signatory to INTELSAT is subject to regulatory fees.<sup>23</sup> We request comment on how we should implement this provision to achieve parity of treatment between Comsat and satellite operators that are subject to regulatory fees. Specifically, we request comment on whether for the year 2000 we should assess regulatory fees for all space stations in geostationary orbit, including satellites that are the subject of Comsat's activities, in the amount of \$94,650 per satellite. Such comments also may address how the nature of Comsat services via INTELSAT may provide a basis for a different fee and state what type of fee would be appropriate to achieve parity of treatment.<sup>24</sup>

# b. Interstate Telephone Service Providers

18. The Commission is required under the Communications Act of 1934, as amended, <sup>25</sup> to establish procedures that will finance interstate telecommunications relay services (TRS), universal service support mechanisms, administration of the North American Numbering Plan (NANPA), and shared costs of the local number portability (LNPA) program. In a series of separate proceedings, the Commission has already established procedures that permits the administrators of these programs to collect contributions from all providers of telecommunications services in support of the above mandates. <sup>26</sup> In 1999, as part of its paperwork streamlining efforts, the Commission amended its rules and required contributors to file only a single form FCC Form 499-A, Telecommunications Reporting Worksheet, and eliminated FCC Form 431, TRS Fund Worksheet. <sup>27</sup> Previously, Form 431, TRS Fund Worksheet, was used to obtain base revenue data from which telephone services regulatory fees were calculated. Because of this form change, it is no longer feasible to obtain base telephone services revenue data using adjusted gross interstate revenues as derived from data previously provided on FCC Form 431, TRS Fund Worksheet. Therefore, beginning in FY 2000, we are proposing that the interstate telephone services regulatory fee be derived from interstate and international end-user revenues data submitted on

<sup>&</sup>lt;sup>21</sup> Public Law 106-180, 114 Stat. 48 (2000).

<sup>&</sup>lt;sup>22</sup> Comsat is the United States Signatory to INTELSAT.

<sup>&</sup>lt;sup>23</sup> As directed by the court, the Commission will also consider the Section 9 fees for FY 1998; however, that consideration will be separate from this proceeding.

<sup>&</sup>lt;sup>24</sup> Note that without the INTELSAT satellites, the fee per satellite would be \$126.525.

<sup>&</sup>lt;sup>25</sup> 47 U.S.C. §§ 151, 225, 251, 254.

<sup>&</sup>lt;sup>26</sup> These contributions are separate and apart from regulatory fees collected to fund the Commission's operations.

<sup>&</sup>lt;sup>27</sup> 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99-\_\_\_, CC Docket No. 98-171 (rel. July 14, 1999)(Contributor Reporting Requirements Order).

FCC Form 499-A, Telecommunications Reporting Worksheet, rather than from data provided on Form 431, TRS Fund Worksheet. A copy of the form and instructions can be downloaded at: <a href="http://www.fcc.gov/formpage.html">http://www.fcc.gov/formpage.html</a>>.

- 19. All providers of telecommunications services within the United States, with very limited exceptions, must file an FCC Form 499-A, Telecommunications Reporting Worksheet. For this filing, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island. Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete and file separately a copy of the Telecommunications Reporting Worksheet.
- 20. For purposes of determining who must file Form 499-A, the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing the Telecommunication Reporting Worksheet, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. For example, all local exchange carriers provide access services and, therefore, provide interstate telecommunications. Included are entities that offer interstate telecommunications services for a fee to the public, even if only a narrow or limited class of users could use the services. Also included are entities that provide interstate telecommunications services to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file the worksheet. Most telecommunications carriers must file the worksheet even if they qualify for the de minimis exemption under the commission's rules for universal service.28
- 21. With the introduction of a new form, FCC Form 499-A, it is no longer feasible to base the interstate telephone services regulatory fee on the adjusted gross interstate revenues because this data was derived from a previously used form (FCC 431) to contribute to the Telecommunication Relay Services Fund. Therefore, beginning in FY 2000, we are proposing that the interstate and international telephone services regulatory fee be derived from interstate and international end-user revenues as submitted by providers on FCC Form 499-A, Telecommunications Reporting Worksheet, as part of the telecommunications provider reporting requirements. The following providers are exempt from paying the interstate telephone service provider regulatory fees: interstate service providers that have mobile service or satellite service revenue, but no local or toll service; government entities within the meaning of the term 47 CFR 1.1162; and carriers whose payment obligation would be less than \$10.30 Note, the interstate telephone service provider fee is based on interstate and international end-user revenues for local and most toll services only. Filers are not allowed to deduct any expenses from subject interstate and international end-user revenues.

<sup>&</sup>lt;sup>28</sup> 47 CFR 54.708.

<sup>&</sup>lt;sup>29</sup> However, these service providers may be subject to payment of regulatory fees under other categories, e.g. space stations.

<sup>&</sup>lt;sup>30</sup> See 47 U.S.C. § 159(h); see also para 29, infra.

#### C. Procedures for Payment of Regulatory Fees

22. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. § 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

#### i. Annual Payments of Standard Fees

23. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the Report and Order terminating this proceeding or by public notice in the Federal Register pursuant to authority delegated to the Managing Director.

# ii. Installment Payments for Large Fees

24. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

# iii. Advance Payments of Small Fees

25. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.<sup>31</sup> We are also proposing that payers of advance fees will submit the entire fee due for the full

<sup>&</sup>lt;sup>31</sup> Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218-219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

#### iv. Minimum Fee Payment Liability

26. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 2000.

#### v. Standard Fee Calculations and Payment Dates

- 27. As noted, the time for payment of standard fees and any installment payments will be announced in our Report and Order terminating this proceeding or will be published in the Federal Register pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before October 1, 1999. Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after October 1, 1999, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.
- 28. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's' subscribers, units or circuits on <u>December 31, 1999</u>, will be used to calculate the fee payment.<sup>32</sup> Regulatory fees are due and payable by the holder of record of the license or permit of the service as of December 31, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 1999, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

<sup>&</sup>lt;sup>32</sup> Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1999, rather than on a count as of December 31, 1999.

#### D. Schedule of Regulatory Fees

29. The Commission's proposed Schedule of Regulatory Fees for FY 2000 is contained in Attachment D of this NPRM.

#### IV. Procedural Matters

#### A. Comment Period and Procedures

- 30. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 24, 2000, and reply comments on or before May 5, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>33</sup>
- 31. Comments filed through the ECFS can be sent as an electronic file via the Internet to <a href="http://www.fcc.gov/e-file/ecfs.html">http://www.fcc.gov/e-file/ecfs.html</a>. Generally, only one copy of an electronic submission must be filed. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via Internet. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.
- 32. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.
- 33. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1-C807, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft <sup>TM</sup> Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case MD Docket No. 00-58, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

<sup>&</sup>lt;sup>33</sup> Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Documents filed in this proceeding will be available for public inspection during regular business hours in the FCC Reference Center, of the Federal Communications Commission, Room CY-A257, 445 12th Street, S.W., Washington, D. C. 20554, and will be placed on the Commission's Internet Home Page <a href="http://www.fcc.gov">http://www.fcc.gov</a>.

#### B. Ex Parte Rules

34. This is a permit-but-disclosed notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.<sup>34</sup>

#### C. Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act,<sup>35</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

# D. Authority and Further Information

36. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.<sup>36</sup> It is ordered that this <u>NPRM</u> is adopted. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this <u>NPRM</u>, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

37. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Secretary

<sup>34 47</sup> CFR 1.1202, 1.1203 and 1026(a).

<sup>35</sup> See 5 U.S.C. 603.

<sup>&</sup>lt;sup>36</sup> 47 U.S.C. 154(i)-(j), 159, & 303(r).

#### INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),<sup>37</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2000. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 33. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>38</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>39</sup>

# I. Need for, and Objectives of, the Proposed Rules:

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 2000, we intend to collect regulatory fees in the amount of \$185,754,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

# II. Legal Basis:

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.<sup>40</sup>

# III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>41</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>42</sup> In addition, the term "small business" has the same meaning as the

<sup>&</sup>lt;sup>37</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601 <u>et. seq.</u>, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>&</sup>lt;sup>38</sup> 5 U.S.C. 603(a).

<sup>&</sup>lt;sup>39</sup> Id

<sup>&</sup>lt;sup>40</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>&</sup>lt;sup>41</sup> 5 U.S.C. 603(b)(3).

<sup>&</sup>lt;sup>42</sup> Id. 601(6).

term "small business concern" under the Small Business Act. <sup>43</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). <sup>44</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." <sup>45</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations. <sup>46</sup> "Small governmental jurisdiction" <sup>47</sup> generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." <sup>48</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States. <sup>49</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. <sup>50</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

#### **CABLE SERVICES OR SYSTEMS**

- 5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.<sup>51</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.<sup>52</sup>
- 6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than

<sup>&</sup>lt;sup>43</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

<sup>44</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>4° 5</sup> U.S.C. 601(4).

<sup>&</sup>lt;sup>46</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>&</sup>lt;sup>47</sup> 47 CFR 1.1162

<sup>48 5</sup> U.S.C. 601(5).

<sup>&</sup>lt;sup>49</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>&</sup>lt;sup>50</sup> Id.

<sup>&</sup>lt;sup>51</sup> 13 CFR 121.201, SIC code 4841.

<sup>&</sup>lt;sup>52</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

400,000 subscribers nationwide.<sup>53</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>54</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

- 7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>55</sup> The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.
- 8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),<sup>59</sup> multipoint distribution systems (MDS),<sup>60</sup> satellite master antenna systems (SMATV), and subscription television services.

#### COMMON CARRIER SERVICES AND RELATED ENTITIES

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data

<sup>&</sup>lt;sup>53</sup> 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. <u>Implementation of Sections of the 1992 Cable Act: Rate Regulation</u>, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

<sup>&</sup>lt;sup>54</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>55 47</sup> U.S.C. 543(m)(2).

<sup>&</sup>lt;sup>56</sup> <u>Id.</u> 76.1403(b).

<sup>&</sup>lt;sup>57</sup> Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

<sup>&</sup>lt;sup>59</sup> Direct Broadcast Services (DBS) are discussed with the international services, infra.

<sup>&</sup>lt;sup>60</sup> Multipoint Distribution Services (MDS) are discussed with the mass media services, infra.

the Commission publishes in its <u>Trends in Telephone Service</u> report.<sup>61</sup> However, in a recent news release, the Commission indicated that there are 4,144 interstate carriers.<sup>62</sup> These carriers include, <u>inter alia</u>, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

- 10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.<sup>63</sup> Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.
- 11. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.
- 12. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>66</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier

<sup>&</sup>lt;sup>61</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000).

<sup>&</sup>lt;sup>62</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000)

<sup>&</sup>lt;sup>63</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. <u>See also Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).</u>

<sup>&</sup>lt;sup>64</sup> 5 U.S.C. § 601(3).

Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

<sup>&</sup>lt;sup>66</sup> U.S. Department of Commerce, Bureau of the Census, <u>1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size</u>, at Firm Size 1-123 (1995) (<u>1992 Census</u>).

<sup>&</sup>lt;sup>67</sup> See generally 15 U.S.C. 632(a)(1).

having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

- 13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>68</sup> According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>69</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.
- 14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.
- 15. **Interexchange Carriers**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent <u>Trends in Telephone Service</u> data, 171 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs

<sup>68 1992</sup> Census, supra, at Firm Size 1-123.

<sup>69 13</sup> CFR 121.201, SIC code 4813.

<sup>&</sup>lt;sup>70</sup> <u>Id</u>.

<sup>&</sup>lt;sup>71</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000)

<sup>&</sup>lt;sup>72</sup> 13 CFR 121.201, SIC code 4813.

<sup>&</sup>lt;sup>73</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000)

that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 171 small entity IXCs that may be affected by the proposed rules, if adopted.

- 16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 212 small entity CAPs and 10 other LECs that may be affected by the proposed rules, if adopted.
- 17. **Operator Service Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent <u>Trends in Telephone Service</u> data, 24 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 24 small entity operator service providers that may be affected by the proposed rules, if adopted.
- 18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent <u>Trends in Telephone Service</u> data, 615 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 615 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

<sup>&</sup>lt;sup>74</sup> 13 CFR 121.201, SIC code 4813.

<sup>&</sup>lt;sup>75</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000)

<sup>&</sup>lt;sup>76</sup> 13 CFR 121.201, SIC code 4813.

<sup>&</sup>lt;sup>77</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000)

<sup>&</sup>lt;sup>78</sup> 13 CFR 121.201, SIC code 4813.

<sup>&</sup>lt;sup>79</sup> FCC, Common Carrier Bureau, Industry Analysis Division, <u>Trends in Telephone Service</u>, Table 19.3 (March 2000)

- 19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed rules, if adopted.
- 20. **Toll-Free 800 and 800-Like Service Subscribers.**<sup>82</sup> Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.<sup>83</sup> According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the proposed rules, if adopted.

#### INTERNATIONAL SERVICES

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).<sup>84</sup> This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>85</sup> According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.<sup>86</sup> The Census report does not provide more precise data.

<sup>&</sup>lt;sup>80</sup> 13 CFR 121.201, SIC code 4813.

<sup>&</sup>lt;sup>81</sup> FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000)

<sup>&</sup>lt;sup>82</sup> We include all toll-free number subscribers in this category, including 888 numbers.

<sup>&</sup>lt;sup>83</sup> FCC, CCB Industry Analysis Division, <u>FCC Releases, Study on Telephone Trends</u>, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

<sup>&</sup>lt;sup>84</sup> An exception is the Direct Broadcast Satellite (DBS) Service, infra.

<sup>85 13</sup> CFR 120.121, SIC code 4899.

<sup>&</sup>lt;sup>86</sup> 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

22. **International Broadcast Stations**. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

## 23. International Public Fixed Radio (Public and Control Stations).

There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

- 24. **Fixed Satellite Transmit/Receive Earth Stations.** There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.
- 25. Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.
- 26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.
- 27. **Mobile Satellite Earth Stations.** There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.
- 28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.
- 29. **Space Stations (Geostationary).** Commission records reveal that there are 64 Geostationary Space Station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.
- 30. **Space Stations (Non-Geostationary).** There are 12 Non-Geostationary Space Station licensees, of which only three systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. **Direct Broadcast Satellites.** Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11.0 million or less in annual receipts. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

#### **MASS MEDIA SERVICES**

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees. The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

<sup>&</sup>lt;sup>87</sup> 13 CFR 120.121, SIC code 4841.

<sup>88 13</sup> CFR 121.201, SIC code 4841.

While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this <u>Notice</u> we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this <u>Notice</u>, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. <u>See Report and Order in MM Docket No. 93-48 (Children's Television Programming)</u>, 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

<sup>&</sup>lt;sup>90</sup> 13 CFR 121.201, SIC code 4833.

<sup>&</sup>lt;sup>91</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, <u>1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1</u>, Appendix A-9 (1995) (<u>1992 Census, Series UC92-S-1</u>).

<sup>&</sup>lt;sup>92</sup> <u>Id.</u>; <u>see</u> Executive Office of the President, Office of Management and Budget, <u>Standard Industrial Classification</u> <u>Manual</u> (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

<sup>93 1992</sup> Census, Series UC92-S-1, at Appendix A-9.

<sup>&</sup>lt;sup>94</sup> <u>Id.</u>, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

- 1992.<sup>95</sup> That number has remained fairly constant as indicated by the approximately 1.616 operating television broadcasting stations in the nation as of September 30, 1999.<sup>96</sup> For 1992,<sup>97</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.<sup>98</sup> Only commercial stations are subject to regulatory fees.
- 33. Additionally, the Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in, radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations. Only commercial stations are subject to regulatory fees.
- 34. Thus, the rules may affect approximately 1,616 full power television stations, approximately 1,200 of which are considered small businesses. Additionally, the proposed rules will affect some 12,615

<sup>95</sup> FCC News Release No. 31327 (Jan. 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

<sup>&</sup>lt;sup>96</sup> FCC News Release, "Broadcast Station Totals as of September 30, 1999."

<sup>&</sup>lt;sup>97</sup> A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See 1992 Census, Series UC92-S-1, at III.

<sup>&</sup>lt;sup>98</sup> The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>99 13</sup> CFR 121.201, SIC code 4832.

<sup>1992</sup> Census, Series UC92-S-1, at Appendix A-9.

<sup>&</sup>lt;sup>101</sup> Id.

<sup>&</sup>lt;sup>102</sup> Id.

<sup>&</sup>lt;sup>103</sup> <u>Id</u>.

The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each colocated AM/FM combination counts as one establishment.

<sup>105</sup> FCC News Release, No. 31327 (Jan. 13, 1993).

<sup>&</sup>lt;sup>106</sup> FCC News Release, "Broadcast Station Totals as of September 30, 1999."

We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

full power radio stations, approximately 11,670 of which are small businesses.<sup>108</sup> These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,194 low power television stations (LPTV).<sup>109</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

#### Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.<sup>110</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.<sup>111</sup> We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 5,186, of which 340 are television stations.<sup>112</sup>

# Auxiliary, Special Broadcast and other program distribution services

- 36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.<sup>113</sup>
- 37. There are currently 3,237 FM translators and boosters, and 2,964 TV translators.<sup>114</sup> The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if

We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

<sup>&</sup>lt;sup>109</sup> FCC News Release, No. 7033 (Mar. 6, 1997).

The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

See, e.g., 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees). See also, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, FCC 00-20, released February 2, 2000 ("Review of EEO Rules").

<sup>112 &</sup>lt;u>See Review of EEO Rules</u>, Appendix B, Sec. C [from compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), Equal Employment Opportunity Staff, Mass Media Bureau, FCC].

<sup>&</sup>lt;sup>113</sup> 13 CFR 121.201, SIC code 4832.

<sup>114</sup> FCC News Release, Broadcast Station Totals as of September 30, 1999, No. 71831 (Jan. 21, 1997).

not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated. <sup>115</sup>

38. **Multipoint Distribution Service (MDS)**. This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees, and the number which are small businesses is unknown.

#### WIRELESS AND COMMERCIAL MOBILE SERVICES

39. **Cellular Licensees**. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular

<sup>115</sup> U.S.C. 632.

For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multipoint Distribution Service (MMDS).

<sup>&</sup>lt;sup>117</sup> 47 CFR 1.2110 (a)(1).

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

<sup>119 47</sup> U.S.C. 309(j).

<sup>&</sup>lt;sup>120</sup> <u>Id</u>. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. <u>See</u> Rand McNally <u>1992 Commercial Atlas and Marketing Guide</u>, 123rd Edition, pp. 36-39.

<sup>&</sup>lt;sup>121</sup> 13 CFR 121.201, SIC code 4812.

<sup>1992</sup> Census, Series UC92-S-1, at Table 5, SIC code 4812.

telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent <u>Telecommunications Industry Revenue</u> data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the proposed rules, if adopted.

- 40. **220 MHz Radio Service -- Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>124</sup> According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>125</sup> Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.
- 41. **220 MHz Radio Service -- Phase II Licensees.** The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. <sup>126</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. <sup>127</sup> The SBA has approved these definitions. <sup>128</sup> An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. <sup>129</sup> Nine hundred and eight (908) licenses were auctioned in 3 different-sized

<sup>123</sup> Trends in Telephone Service, Table 19.3 (March 2000).

<sup>&</sup>lt;sup>124</sup> 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

<sup>&</sup>lt;sup>126</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras, 291-295 (1997).

<sup>&</sup>lt;sup>127</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para, 291.

<sup>&</sup>lt;sup>128</sup> See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

<sup>&</sup>lt;sup>129</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.<sup>130</sup>

- 42. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. 131 At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1.500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.
- 43. **Mobile Service Carriers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, <sup>133</sup> and the most recent <u>Telecommunications</u> <u>Industry Revenue</u> data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. <sup>134</sup> Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.
- 44. **Broadband Personal Communications Service (PCS).** The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional classification

Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

<sup>&</sup>lt;sup>131</sup> 13 CFR 121.201, SIC code 4812.

<sup>&</sup>lt;sup>132</sup> Trends in Telephone Service, Table 19.3 (February 19, 1999).

<sup>133 13</sup> CFR 121.201, SIC code 4812.

<sup>&</sup>lt;sup>134</sup> Trends in Telephone Service, Table 19.3 (February 19, 1999).

<sup>135</sup> See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the